

REMARKS/ARGUMENTS

The Office Action of May 29, 2008, has been carefully reviewed and these remarks are responsive thereto. Claims 46 and 47 have been added.¹ No new subject matter has been added. Claims 1, 3-42, 44, 46, and 47 are pending upon entry of the present paper. No new subject matter has been added. Reconsideration and allowance of the application are respectfully requested.

Applicants provide the following remarks in order to supplement the remarks in Applicants' "Response And Request For Reconsideration" dated June 27, 2008, in view of the Advisory Action mailed July 25, 2008.

Rejections Under 35 U.S.C. § 112

Claims 24-30 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More specifically, the referenced claims are rejected based on the recitation of a "computer-readable storage media storing executable instructions." This rejection is traversed.

In Applicants' "Response And Request For Reconsideration" dated June 27, 2008, at page 11 Applicants discussed by way of reference to MPEP § 2163.04 (and the citation to *In re Buchner*) that the written description requirement is assessed from the perspective of whether a person skilled in the art would recognize in an applicant's disclosure a description of the invention defined by the claims, and that a (patent) specification preferably omits that which is well-known to those skilled in the art and already available to the public. Applicants incorporate those remarks herein by way of reference.

The Advisory Action at paragraph 2 responded to the above-noted remarks, maintaining that the rejection is proper because the specification (as well as the original claims) allegedly do not provide any support or definition for the term "computer-readable storage media" such that one of skill in the art would not recognize that the inventor(s) had possession of the claimed invention at the time the application was filed.

¹ Applicants note that new claims 46 and 47 are supported by the specification when read as a whole, and in particular, paragraphs [0017]-[0022] and Figures 3 and 4.

Applicants respectfully disagree with the Office that the term “computer-readable storage media” is not supported by Applicants’ specification. Applicants refer the Office to MPEP § 2163.02 (providing that the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement); *see also* MPEP § 2163 (providing that to comply with the written description requirement of 35 U.S.C. 112, para. 1, . . . each claim limitation must be expressly, *implicitly*, or *inherently* supported in the originally filed disclosure) (emphasis added). Applicants respectfully submit that, when read in its entirety (as opposed to merely searching for a text string “computer-readable storage media”), the specification has ample support for the claims. Applicants are not required to use the same terms in the disclosure to satisfy the written description requirement and because Applicant’s specification provides at least implicit support for the claimed features, 35 USC § 112 is satisfied.

Applicants respectfully submit that the Office has applied an improper written description requirement/standard. Applicants note that compliance with the written description requirement must be assessed from the perspective of one skilled in the art, and that one of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art.²

For at least the foregoing reasons, Applicants submit that the section 112 rejection is improper and respectfully request withdrawal of the rejection in the next communication.

Rejections Under 35 U.S.C. § 103

Claims 1, 6-8, 21, 23-29, 31, 33-38, 41, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson (U.S. Pat. No. 5,513,246) in view of Chen (U.S. Pat. No. 6,731,936), and further in view of Malek (U.S. Pat. No. 5,822,313).

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Ahopelto (U.S. Pat. No. 5,970,059).

Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Official Notice.

² *See, e.g., In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995).

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Taketsugu (U.S. Pat. No. 5,420,863).

Claims 9-14, 16, 18-20, and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jonsson in view of Chen, and further in view of Makinen (U.S. Pat. No. 5,764,700).

Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Makinen, and further in view of Doshi (U.S. Pat. No. 5,936,965).

Claim 32 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Doshi.

Claims 40 and 44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Makinen, and further in view of Malek.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Makinen, and further in view of Lim (U.S. Pat. No. 6,766,168).

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Chen and Malek, and further in view of Lim.

These rejections are traversed for at least the following reasons.

Independent claim 9 recites, among other features, “an election module for switching reception of the mobile terminal from the first wireless transmitter to the second wireless transmitter after reception of said first transmission burst has been completed and before a consecutive second transmission burst is received from said second wireless transmitter.”

In Applicants’ Response And Request For Reconsideration, Applicants noted that claim 9 imposes a temporal requirement that the election module perform the switching after reception of a first transmission burst has been completed and before a consecutive second transmission burst is received from a second wireless transmitter. Applicants distinguished these features over the applied references, and incorporate those remarks herein by way of reference.

The Advisory Action at paragraphs 3-4 acknowledges the temporal requirement imposed by claim 9, asserts that Chen and Malek describe hard handoff/handover, and asserts that the whole purpose of handover is to permit a mobile user to continue to receive data. The Advisory

Action continues that hard handover is commonly performed between bursts (packets) for the simple purpose of maintaining the integrity of data.

Notwithstanding whether the above-noted assertions are accurate, Applicants point out that the instant application has a filing date of February 28, 2002. In order to avoid a potential application of impermissible hindsight bias (or deeming the above-noted features recited in claim 9 “obvious” merely due to the passage of time), Applicants respectfully request the Office to provide proof/documentation that it was recognized in the art at the time of the instant invention that hard handover was performed between bursts (packets) for the purpose of maintaining the integrity of data. Pending such proof/documentation, Applicants submit that claim 9 is allowable for at least the reasons provided in Applicants’ Response And Request For Reconsideration

Amended independent claim 24 recites, among other features, one or more computer-readable storage media storing executable instructions that, when executed by a processor, cause a device to “receive at a digital broadcast receiver included in the device a digital video broadcasting information from a plurality of synchronized digital video broadcasting wireless transmitters, wherein each synchronized transmitter synchronously transmits *via a uni-directional protocol* a common content signal, and wherein at least a first portion of the digital video broadcasting information is received as a first transmission burst, said first transmission burst broadcast by a first digital video broadcasting wireless transmitter of the plurality of wireless transmitters.”

Applicants incorporate herein by way of reference the remarks included in Applicants’ Response And Request For Reconsideration at page 14 as they relate to Malek’s TDMA controller communicating on the basis of a bi-directional TDMA protocol. Conversely, amended claim 1 relates to receiving at a digital broadcast receiver a digital video broadcasting information from a plurality of synchronized digital video broadcasting wireless transmitters, wherein each synchronized transmitter synchronously transmits *via a uni-directional protocol* a common content signal. Accordingly, given that Malek is incompatible with the technology of claim 1, Applicants submit that a combination of Malek with Jonsson and Chen is improper in view of the amended features of claim 1.

The Advisory Action at paragraph 5 states that the grounds of rejection are based on Jonsson in view of Chen and further in view of Malek, and that the teachings of Malek are being brought into the modified system of Jonsson and Chen. More specifically, the Office concedes that a reference must be considered in its entirety, but then attempts to undo this concession by stating that the entire system of Malek does not need to be brought to the combination of Jonsson and Chen.

Applicants respectfully submit that the Office has misapplied the standard for applying a section 103 rejection. More specifically, Applicants refer to MPEP §§ 2141 and 2141.02 (VI.), which serve as the basis for applying a section 103 rejection and require that references be considered as a whole. In contrast, MPEP §§ 2131 and 2131.05 relate to a rejection under section 102 based on anticipation, and provide that a reference is no less anticipatory if, after disclosing the invention, the reference then disparages it, and the question of whether a reference “teaches away” from the invention is inapplicable to an anticipation analysis. In view of the remarks in the Advisory Action at paragraph 5, Applicants submit that the Office has erroneously applied a section 102 standard in rejecting claim 24 under section 103. Applying a section 103 rejection to claim 24, the Office is obligated to consider the references (e.g., Malek) *in their entirety*, and under such a reading, Malek teaches away from the features of claim 24. Accordingly, claim 24 is allowable.

Amended independent claim 1 recites, among other features, “receiving at a mobile terminal a first digital video broadcasting signal broadcast by a first wireless transmitter at a first frequency via a uni-directional protocol; when said first digital video broadcasting signal meets a first predefined criterion, the mobile terminal deriving digital video broadcasting signal data from a second digital video broadcasting signal broadcast by a second wireless transmitter via a uni-directional protocol.” The Office’s reliance on Malek in combination with the other applied references is improper for at least substantially similar reasons as discussed above with respect to claim 24 because the above-noted features as recited in claim 1 relate to receiving at a mobile terminal a first digital video broadcasting signal broadcast by a first wireless transmitter at a first frequency via a uni-directional protocol; when said first digital video broadcasting signal meets a

first predefined criterion, the mobile terminal deriving digital video broadcasting signal data from a second digital video broadcasting signal broadcast by a second wireless transmitter via a uni-directional protocol. As discussed above, Malek is directed to a TDMA controller which communicates on the basis of a bi-directional TDMA protocol, rendering the Malek technology incompatible with the technology of claim 1. Accordingly, claim 1 is allowable over the applied references.

Independent claim 16 recites features similar to those described above with respect to claim 9. Claim 16 is allowable for at least substantially similar reasons.

Independent claim 21 recites, among other features, “. . . when said second bit-error rate is less than said quasi-error-free value, *the mobile terminal . . . switching reception to said second wireless transmitter.*”

In Applicants' Response and Request For Reconsideration at the bottom of page 15 and at the top of page 16, Applicants discussed Jonsson demonstrating performing switching at a mobile services center, as opposed to at a mobile terminal as required by claim 21. Applicants further discussed the reason why one of skill in the art would not have had an apparent reason to modify Jonsson to include functionality to perform the switching at a mobile terminal. Applicants incorporate those remarks herein by way of reference.

The Advisory Action at paragraph 7 mischaracterizes Applicants' remarks in this respect. Applicants remarks were intended to demonstrate why one of skill in the art would not have had a reason to combine Jonsson with, e.g., Chen, to arrive at the above-noted features recited in claim 21. Applicants respectfully submit that the Office has applied impermissible hindsight in combining Jonsson and Chen because one of ordinary skill in the art would not have had a reason to modify Jonsson to incorporate the disclosures of Chen (which allegedly demonstrate features related to performing switching at a mobile terminal). More specifically, combining the (alleged) teachings of Chen with Jonsson would result in an unnecessary duplication of computing resources. Accordingly, since the combination of references is improper, claim 21 is allowable for at least these reasons.

Independent claim 31 recites features similar to those described above with respect to claim 24, and is allowable for at least reasons substantially similar to those discussed above with respect to claim 24.

Independent claim 36 recites features similar to those described above with respect to claim 21. Claim 36 is allowable for at least those same reasons.

The dependent claims are allowable for at least the same reasons as their respective base claims because any of the additional reference(s) fail to cure the deficiencies of the references applied to the base claims.

New Claims

Claims 46 and 47 have been added in the present paper. While the referenced claims have not been examined to date, Applicants offer the following remarks in an effort to expedite the prosecution.

Claim 46 recites “wherein the series of periodic bursts are included in a time-sliced digital video broadcasting signal, and wherein the first digital video broadcasting signal comprises a first time-slice of the time-sliced digital video broadcasting signal.” Chen fails to disclose such features. Instead, Chen at col. 7, line 63 - col. 9, line 14 merely describes hard and soft handoff. Chen does not describe a first digital video broadcasting signal that comprises a first time-slice of a time-sliced digital video broadcasting signal as required by claim 46. As such, claim 46 is allowable over Chen. None of the other applied references cure the deficiencies of Chen in this respect, and as such, claim 46 is allowable over the applied references.

Claim 47 recites “wherein the digital video broadcasting information is transmitted at a first data transmission rate, and wherein the first transmission burst has a second data transmission rate greater than the first data transmission rate.” For reasons substantially similar to those described above with respect to claim 46, Chen (or any of the additional references of

record, alone or in combination) fails to teach or suggest such features. As such, claim 47 is allowable.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the examiner believes the application is not in condition for allowance or there are any questions, the examiner is requested to contact the undersigned at (202) 824-3153.

Respectfully submitted,

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